

REMARKS

Claims 1, 5, 21, and 23-70 are pending and under consideration.

Applicants cancel, without prejudice, previously withdrawn claims 4 and 9. Claims 4 and 9 were withdrawn from consideration pursuant to a restriction requirement and are being canceled in accordance with that restriction requirement. Cancellation of claims 4 and 9 does not alter the scope of the pending claims.

Claims 6 and 8 were previously withdrawn from consideration as directed to a non-elected species. Applicants request rejoinder of these withdrawn claims.

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order in which they appear in the Office Action.

Withdrawn Rejections

Applicants note that the previous rejection of Claims 60-67 under 35 U.S.C. § 112, first paragraph, has been withdrawn.

Rejection Maintained - Double Patenting

Claims 1, 5, 21, 25, 26, 28, 30, 31, 35, 36, 38-43, 50-53, and 56-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1, 52, 56-59, 68, 72, 76-79, 90-93, 95, and 97 of co-pending Application No. 10/652,298.

Claims 61 and 64-67 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 23, 25-27, 29-31, 33, 34, 35, 37, 38, 53-55, 60-64, 69-71, 73-75, 80, 81, 84-87, 90-93, 96, 98, and 100 of co-pending Application No. 10/652,298.

Applicants traverse these rejections. Nevertheless, to expedite prosecution, Applicants enclose herewith a terminal disclaimer. Applicants request reconsideration and withdrawal of this rejection in view of the terminal disclaimer. Applicants filing of a terminal disclaimer is solely to expedite allowance of the instant application and is not in acquiescence to the rejection.

New Objections and/or Rejections

Specification

The title is objected to because it is allegedly not descriptive. Applicants' amendment to the title is believed to obviate the objection. Applicants' amendment to the title does not alter the scope or interpretation of the claims.

Double Patenting

Claims 21, 25, 35, 50, 51, 61, 64, 65, and 67 are rejected on the ground of obviousness-type double patenting as allegedly being unpatentable over claims 1-13, 19, 21, 23, 25, 27-30, 32, 34-37, 39-44, 45-50, 53-56, 59-62, 64, and 66 of U.S. Patent No. 7,498,304.

Applicants traverse this rejection. Nevertheless, to expedite prosecution, Applicants enclose herewith a terminal disclaimer. Applicants request reconsideration and withdrawal of this rejection in view of the terminal disclaimer. Applicants filing of a terminal disclaimer is solely to expedite allowance of the instant application and is not in acquiescence to the rejection.

Allowable Subject Matter

Applicants note with appreciation that the Examiner has indicated that claims 32-34, 44-49, 60, and 63 are allowable. Further, the Examiner has indicated that claims 23, 24, 27, 29, 37, 54, 55, 62, and 68-70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Co-Pending Applications

The Examiner is obviously aware of co-pending Application No. 10/652,298 (currently applied in the above noted double patenting rejection and also handled by Examiner Howard). Applicants invite the Examiner to consider all prior, ongoing, and future prosecution of co-pending Application 10/652,298 (the most recent action is a Non-final Office Action, mailed on June 18, 2009).

Additionally, Applicants take this opportunity to update the Examiner on the status of various co-pending applications – the existence of which has already been brought to the Examiner's attention and made of record in this case. Applicants invite the Examiner to consider all prior, ongoing, and future prosecution in these co-pending applications. Application serial number 09/804,490 issued November 4, 2008 as U.S. Patent No. 7445778. Application serial number 10/652,686 issued March 3, 2009 as U.S. Patent No. 7498304. Application serial number 09/883,848 has been abandoned and a Notice of Abandonment was mailed June 4, 2009. The most recent action in application serial number 10/772,090 is Applicants' response filed August 5, 2009 (responsive to a Non-final Office Action mailed July 1, 2009). The most recent action in application serial number 10/727,195 is a Final Office Action mailed July 20, 2009.

CONCLUSIONS

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Should an extension of time be required, Applicants hereby petition for the same and request that the extension fee and any other fee required for timely consideration of this submission be charged to Deposit Account No. 18-1945 under order number CIBT-P01-104.

Dated: August 18, 2009

Respectfully submitted,

By /Melissa S. Rones/
Melissa S. Rones
Reg. No. 54,408
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000
(617) 951-7050 (Fax)
Attorneys/Agents For Applicant